

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

LaMarr Donald,

Plaintiff,

v.

Wells Fargo Bank, N.A.,

Defendant.

:
:
: Civil Action No.: 1:13-cv-00667
:
:
:

: **COMPLAINT**
: **JURY TRIAL DEMANDED**
:
:
:

For this Complaint, the Plaintiff, LaMarr Donald, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transact business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiff, LaMarr Donald ("Plaintiff"), is an adult individual residing in Beaumont, Texas.
4. Defendant Wells Fargo Bank, N.A. ("WF"), is a South Dakota business entity with an address of 101 North Phillips Avenue, Sioux Falls, South Dakota 57104.

FACTS

5. Within the last four years, WF contacted Plaintiff by placing numerous calls daily to Plaintiff's cellular telephone.

6. At all times mentioned herein, WF contacted Plaintiff on his cellular telephone using an automated telephone dialing system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.

7. Often times, Plaintiff's cellular telephone would ring once or twice and when Plaintiff answered, he heard a dial tone and/or the call was abandoned.

8. Plaintiff did not have his current cellular telephone number at the time he had an account with WF in 2001. As such, Plaintiff never provided his express consent to be contacted on his cellular telephone.

9. On at least one occasion, Plaintiff requested WF cease all calls to his cellular telephone.

10. Despite such request, WF continued to hound Plaintiff with ATDS calls to his cellular telephone.

11. Out of frustration from the excessive calls, Plaintiff retained legal representation in an effort to stop the calls. Plaintiff provided WF with his attorney's contact information on or about August 21, 2013, and repeated his request that WF cease all calls.

12. Nonetheless, WF continued to place at least four (4) additional calls to Plaintiff.

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.**

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. At all times mentioned herein and within the last four years, WF called Plaintiff on his cellular telephone using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

15. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”*2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

16. WF’s telephone systems have all the earmarks of a predictive dialer. Often times when WF called Plaintiff, the phone would ring only or two times and then WF’s telephone system would abandon the call before Plaintiff could answer.

17. Upon information and belief, WF’s predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

18. Plaintiff did not provide his consent to be contacted on his cellular telephone, and in fact instructed WF to stop all calls to him and cease calling his cellular telephone.

19. WF continued to place automated calls to Plaintiff’s cellular telephone knowing there was no consent to continue the calls and after being advised by Plaintiff that he was represented by an attorney. As such, each call placed to Plaintiff was made in knowing and/or

willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

20. The telephone number called by WF was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

21. The calls from WF to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

22. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

23. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(1)(A);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: November 15, 2013

Respectfully submitted,

By /s/ Jody B. Burton

Jody B. Burton, Esq.
Bar No.: 71681
LEMBERG & ASSOCIATES L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
E-mail: jburton@lemborglaw.com
Attorneys for Plaintiff